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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,224

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David E. Richardson

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

JAIN, RAJ K

ART UNIT

PAPER NUMBER

2416

NOTIFICATION DATE

DELIVERY MODE

06/19/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/814,224	Applicant(s) RICHARDSON, DAVID E.	
	Examiner RAJ JAIN	Art Unit 2416	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,3-9,11-16,18-23 and 25-30.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/RAJ JAIN/
 Examiner, Art Unit 2416

Applicant has presented arguments after prosecution on the merits has closed. While Examiner asserts that the Final Office action submitted April 28, 2009 addresses all issues, however, in order to advance prosecution in a timely manner, Examiner will address Applicants' specific contentions as appropriate.

With respect to claim(s) objections, the amendments to claims 16, 19 and 23 are accepted and therefore the Objection is withdrawn.

With respect to claim(s) 35 USC 112 rejection to claim 1, the subject rejection is withdrawn based on submitted amendment.

With respect to claim(s) 1, 3-9, 11-16, 18-23 and 25-30, Applicant contends "Neither Voit or Fletcher teach or suggestdetermining a source with an amount of network traffic over a first set of nodes which exceeds a threshold, or determining which of a plurality of top talker sources are not from the first set of nodes." Instead, Voit teaches the ability to prioritize traffic for each customer to support QoS for the various services as required by service level agreements between the customer and the carrier. (Voit, col. 19 lines 4-7, col. 20 lines 1-12)." Applicant has attacked Voit without consideration of the primary reference Fletcher. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With that said, Fletcher explicitly discloses determining a source associated with an amount of network traffic over the first set of nodes (col 4 lines 11-52, col 6 lines 10-15; the dRMON monitors network traffic volume for each set of nodes). Voit is used to cure the deficiency with respect to where a network node exceeds a threshold (col 20 lines 1-5). With respect to "determining which of a plurality of top talker sources are not from the first set of nodes". This limitation was not part of the original claim set and is therefore is moot.

Applicant further contends "While the references teach tracking or monitoring network traffic volume and errors, nothing in the references indicates which of the traffic sources are top talkers. (See, e.g., Fletcher col. 4 lines 47-51, and Voit col. 32 lines 26-50). The references also do not test whether the VLAN identifier of at least one of the top talker sources is the same as the VLAN identifier of a VLAN being tested before displaying the indicator of at least one of the top talker sources."

With respect to the first portion of the contention, Examiner asserts this is met as stated above with respect to Voit (col 20 lines 1-5) which defines network nodes which exceed the physical rate limitations in other words bandwidth capacity of a link, interpreted to also mean exceeding a threshold of a given link (col 20 lines 6-9).

With regards to the remaining portion of the contention, first off In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "top talker sources" not the same as the VLAN identifier of a VLAN being tested) are not recited in the rejected claim(s) 9, 16 and 23. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claim 1, Examiner respectfully disagrees, Voit explicitly discloses top talkers as congestion based nodes that exceed the thresholds of specific nodes (See Figs. 7a & 7b; col 20 lines 1-9) and testing of VLAN that are not the same VLAN as the top talker sources or the congested sources (col 28 lines 62- col 29 lines 29; col 33 lines 10-18; lines 37-42). Voit discloses displaying the contents of the test (col 33 line 65 – col 34 line 15).

One skilled in the art will appreciate that the virtual LAN (VLAN) standard allows for grouping nodes into Logical LAN groupings on a single fabric. In a VLAN environment, packets are assigned to a particular logical LAN and the packet is constrained to stay within that logical LAN. This ensures that unicast packets cannot be received outside of a particular grouping. Broadcast and multicast packets from a given node with a virtual LAN are similarly constrained to remain within the virtual LAN. The traffic containment that VLAN's provide, along with the controlled distribution of multicast packets, can permit a greater number of end nodes to be supported on a fabric.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Voit within Fletcher so as to contain traffic within a specific group and allow for network flexibility of future growth by adding additional communication and/or multimedia services as needed.

In view of the foregoing, Examiner asserts Fletcher et al (USP 6085243) in view of Voit et al (USP 7,042,880 B1) recites the limitations of claims 1, 9, 16 and 23 and therefore the rejection is sustained.

With respect to claim(s) 3, 11, 18 and 25, Applicant contends "Fletcher teaches an NDIS Desk Top Agent (DTA) that establishes a source of directed packets to analyze as well as means to communicate with the dRMON proxy. (Fletcher col. 8, lines 5-10). The dRMON proxy is not a username associated with a top talker source."

Fletcher discloses a dRMON that defines all nodes and users within a network to monitor and report data traffic statistics. Voit disclose top talkers as congestion based nodes that exceed the thresholds of specific nodes (See Figs. 7a & 7b; col 20 lines 1-9).